



April 29, 2002

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2002-2209

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162031.

The Harris County Human Resources and Risk Management Department (the “county”) received a written request for certain information regarding a traffic accident involving a county constable and the requestor’s client. Specifically, the requestor seeks

1. copy of the statement of Officer Joshua Comer regarding this incident;
2. copy of the sheriff/constable department investigation of this incident; [and]
3. copy of any and all documents that provide information regarding any disciplinary sanctions officer Comer has received as a result of this and any other accidents he has been involved in as a deputy constable.

You contend that the requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.130 of the Government Code.

We note at the outset that one of the documents you submitted to this office constitutes a medical record of the requestor’s client, the release of which is governed by the Texas Medical Practice Act (the “MPA”), Occ. Code § 151.001 *et. seq.*, not the Public Information Act. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Additionally, section 159.006(a) of the Occupations Code provides as follows:

Unless the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, a physician who receives a written consent for release of information *as provided by Section 159.005 shall furnish copies of the requested medical records*, or a summary or narrative of the records, including records received from a physician or other health care provider involved in the care or treatment of the patient. The physician shall furnish the information not later than the 30th day after the date of receipt of the request. [Emphasis added.]

Under section 159.005(b), the consent to release must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code § 159.005(b). We thus conclude that pursuant to section 159.006(a), the county must release the submitted medical record, which we have marked, upon receipt of a signed, written consent for the release of the records as provided by section 159.005.

We next note that among the documents you submitted to this office is an accident report form that has been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The release of this accident report is governed by chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the county with the three pieces of information. Consequently, the county must release this accident report pursuant to section 550.065 of the Transportation Code.

We next note that some of the submitted records are specifically made public under section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108.

Among the submitted documents is a completed "Vehicle Accident Report" made public under section 552.022(a)(1). You did not raise section 552.108 with regard to this report. Therefore, the county may withhold this record only if it is made confidential under other law. Although you argue that this record is excepted under section 552.103 of the Government Code, this provision is a discretionary exception and therefore is not "other law" for purposes of section 552.022. *See, e.g.,* Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive section 552.103).

However, because section 552.130 is a mandatory exception, we will consider the applicability of this exception to the Vehicle Accident Report made public under section 552.022. Section 552.130(a)(2) of the Government Code requires the county to withhold information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the county must withhold most of the Texas license plate and VIN numbers contained within the Vehicle Accident Report, as well as all other such numbers in the remaining submitted documents. In all other respects, the county must release the Vehicle Accident Report to the requestor. We particularly note that the requestor has a special right of access to his client's driver's license and license plate numbers pursuant to section 552.023 of the Government Code; accordingly, the county may not withhold these numbers pursuant to section 552.130.

We now address the applicability of section 552.103 to the remaining records at issue. Section 552.103 is commonly referred to as the "litigation exception." Under section 552.103(a) and (c), the governmental body raising this exception must demonstrate that (1) litigation involving the governmental body was pending or reasonably anticipated on the date that the governmental body received the records request, and (2) the information at issue is related to that litigation. *See also University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103.

In Open Records Decision No. 638 (1996), this office determined how a governmental body must establish that litigation is reasonably anticipated when relying solely on a claim letter. We stated that the governmental body must 1) show that it has received a claim letter from an allegedly injured party or his attorney and 2) state that the letter complies with the notice of claim provisions of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, or an applicable municipal statute or ordinance. Because you represent that the notice of claim received by the county meets the requirements to serve as notice to the county under the Texas Tort Claims Act, we conclude that you have met your burden of establishing that civil litigation against the county was reasonably anticipated on the day the

county received the current records request. Furthermore, after reviewing the information at issue, we conclude that the records not subject to section 552.022, discussed above, "relate" to the anticipated litigation for purposes of section 552.103 of the Government Code. Accordingly, the county may withhold the remaining submitted information pursuant to section 552.103, with the following exceptions.

We note that some of the documents you submitted to this office have been previously viewed by the potential opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information.¹ Open Records Decision Nos. 349 (1982), 320 (1982). Because you have raised no other applicable exception to disclosure, the county must release these documents to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

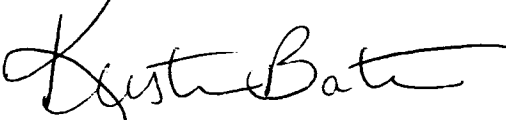
¹We also note that the applicability of section 552.103 ends once the likelihood of litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a stylized, flowing script.

Kristen A. Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 162031

Enc: Submitted documents

c: Mr. Dwight E. Jefferson
12 E. Gateway Plaza, Suite 1550
Houston, Texas 77046-1210
(w/o enclosures)